

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 551

An Act to amend and reenact §§ 63.1-198, 63.1-198.1, 63.1-198.2, 63.1-198.3, and 63.1-199 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-198.4, relating to licensure and registration as child welfare agencies; child welfare employees and volunteers; central registry records check; penalty.

[S 419]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-198, 63.1-198.1, 63.1-198.2, 63.1-198.3, and 63.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-198.4 as follows:

§ 63.1-198. Investigation on receipt of application.

Upon receipt of the application, the Commissioner shall cause an investigation to be made of the applicant's activities, services, facilities, financial responsibility, and character and reputation. The character and reputation investigation shall include a criminal history records check, pursuant to § 19.2-389, *as well as a search of the central registry maintained pursuant to § 63.1-248.8 on any founded complaint of child abuse and neglect*, of the applicant; his agents and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children; and any other adult living in the home of an applicant for licensure or registration as a family day home. The applicant shall submit the request for a criminal history record check to the Central Criminal Records Exchange and shall forward the original notification of criminal record clearance or original criminal history record to the Commissioner's representative prior to issuance of a license or approval of registration. All applicants for licensure or registration shall provide the Commissioner's representative with a sworn statement or affirmation disclosing whether the applicant; his agents and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children; or any other adult living in the home of an applicant for licensure or registration as a family day home has ever been (i) convicted of or is the subject of pending charges for any offense specified in § 63.1-198.1 within the Commonwealth or any equivalent offense outside the Commonwealth, (ii) *convicted of or is the subject of pending charges for any other felony in the five years prior to the application date for licensure or registration, or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.* The Commissioner shall not issue a license or registration to any child welfare agency if the applicant; his agents and board members who are involved in the day-to-day operations of the child welfare agency or who are alone with, in control of, or supervising one or more of the children; or any other adult living in the home of an applicant for licensure or registration as a family day home has been (i) convicted of one of the crimes specified in § 63.1-198.1, (ii) *convicted of any other felony in the five years prior to the application date for licensure or registration, or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.* No applicant, agent or board member of the applicant shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having a criminal history records check and a sworn disclosure statement or affirmation showing that he has not been (i) convicted of or is not the subject of pending charges for one of the crimes specified in § 63.1-198.1, (ii) *convicted of or is not the subject of pending charges for any other felony in the five years prior to the application date for licensure or registration, or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.* Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

For purposes of this section, convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony conviction if committed by an adult within or outside the Commonwealth.

The applicant shall afford the representatives of the Commissioner required to make the investigation reasonable opportunity to inspect all of the applicant's facilities, books and records, and to interview its agents and employees and any child or other person within its custody or control. However, the financial records of an applicant shall not be subject to inspection if the applicant submits a current balance sheet and income statement accompanied by a letter from a certified public accountant certifying the accuracy thereof and three credit references.

The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense specified in § 63.1-198.1 shall not apply to any child-caring

institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

§ 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records and central registry checks required; suspension or revocation of license.

On or after July 1, 1992, a child welfare agency licensed or registered in accordance with the provisions of this chapter shall not hire for compensated or voluntary employment nor shall private child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers persons who have been (i) convicted of murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in § 18.2-47 A, abduction for immoral purposes as set out in § 18.2-48, assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, car jacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-60, any felony stalking violation as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, ~~or possession of child pornography as set out in § 18.2-374.1:1~~, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369 ~~or convicted under~~, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state; (ii) convicted of any other felony in the five years prior to the application date for employment; or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

For purposes of this section, convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony conviction if committed by an adult within or outside the Commonwealth.

Any person desiring to work or volunteer at a child welfare agency or desiring to be a foster or adoptive parent with a private child-placing agency or desiring to be a family day home provider approved by a family day system shall provide the hiring or approving facility or agency with a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth, (ii) convicted of or is the subject of pending charges for any other felony in the five years prior to the application date for employment, or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Further dissemination of the information provided is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

A child welfare agency shall obtain for any compensated employees and any volunteers within twenty-one days of employment or commencement of volunteer service, (i) a copy of the information from the central registry and (ii) an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. Prior to the approval of the applicant, licensed private child-placing agencies and family day systems shall obtain (i) a copy of the information from the central registry and (ii) a criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange for all persons applying to be foster or adoptive parents or family day home providers and any other adult living in the home of the family day home provider. Failure to obtain information from the central registry and a criminal record clearance or criminal history record from the Central Criminal Records Exchange for each employee, volunteer, foster or adoptive parent, family day home provider and any other adult living in the home of the family day home provider and the disclosure statement required by this section shall be grounds for denial, suspension or revocation of a license or registration pursuant to this chapter. If an applicant is denied employment or approval because of information from the central registry or convictions appearing on his criminal history record, the child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending such licensed or registered facility whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

The provisions of this section shall not apply to local boards of public welfare or social services which place children in foster or adoptive homes pursuant to § 63.1-56.

The provisions of this section shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7.2.

§ 63.1-198.2. Records check by unlicensed center.

Any child day center which is exempt from licensure pursuant to § 63.1-196.3 shall require a prospective employee or volunteer or any other person officially involved in the operations of the facility in which the center is located to first obtain *a search of the central registry maintained pursuant to § 63.1-248.8 on any founded complaint of child abuse or neglect* and a criminal records check as provided in subdivision A 11 of § 19.2-389 and shall refuse employment or work to any person who has been *(i) the subject of a founded complaint of child abuse or neglect, (ii) convicted of any offense specified in § 63.1-198.1, or (iii) convicted of any other felony in the five years prior to employment.* Such facility shall also require a prospective employee to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been *(i) the subject of a founded complaint of child abuse or neglect, (ii) convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth, or (iii) convicted of or is the subject of pending charges for any other felony in the five years prior to employment. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony conviction if committed by an adult within or outside the Commonwealth.* Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment because of *information from the central registry or convictions appearing on his criminal history record*, the facility shall provide a copy of the information obtained from the *central registry or Central Criminal Records Exchange or both* to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

§ 63.1-198.3. Allowing sex offender or child abuser to operate or reside in family day home.

It shall be unlawful for any person to operate a family day home ~~knowing if he, or if he knows that~~ any other person who resides in the home, has been convicted of a felony in violation of §§ 18.2-48, § 18.2-61, ~~§—18.2-63, §—18.2-64.1, §—18.2-67.1, §—18.2-67.2, §—18.2-67.3, §—18.2-67.5, §—18.2-355, § 18.2-361, §—18.2-366, §—18.2-369, § 18.2-370~~ ~~or~~, ~~§—18.2-370.1, 18.2-371.1, or § 18.2-374.1~~ *or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.* A violation of this section shall be punishable as a Class 1 misdemeanor.

§ 63.1-198.4. Criminal record review and waiver.

A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a conviction in his criminal record review, pursuant to §§ 63.1-198, 63.1-198.1, 63.1-198.2 or § 63.1-199, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in § 18.2-47 A, abduction for immoral purposes as set out in § 18.2-48, assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, car jacking as set out § 18.2-58.1, extortion by threat as set out in § 18.2-60, any felony stalking violation as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use

of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, prisoners crimes as set out in § 53.1-203, or an equivalent offense in another state. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The State Board of Social Services shall promulgate regulations to implement the provisions of subsection A.

§ 63.1-199. Issuance or refusal of license; notification.

Upon completion of such investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the children over whom he may have custody or control, (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents, and (iii) he, or the officers and agents of the applicant if it is an association, partnership or corporation, is of good character and reputation. Otherwise, the license shall be denied. A license shall not be granted to any applicant who has been (i) *the subject of a founded complaint of child abuse or neglect*, (ii) *convicted of any offense specified in § 63.1-198.1, or (iii) convicted of any other felony in the five years prior to the application date for licensure. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony conviction if committed by an adult within or outside the Commonwealth.* If an applicant is denied licensure because of *information from the central registry or convictions appearing on his criminal history record*, the Commissioner shall provide a copy of the information obtained from *the central registry or the Central Criminal Records Exchange or both* to the applicant. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

The provisions of this section referring to a conviction for any offense specified in § 63.1-198.1 shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.

2. That the State Board of Social Services shall promulgate regulations to be effective in 280 days or less of the enactment of this act.